

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 129
AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to judicial proceedings involving the parent-child relationship.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.375, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 452.375,
3 to read as follows:

452.375. 1. As used in this chapter, unless the
2 context clearly indicates otherwise:

3 (1) "Custody" means joint legal custody, sole legal
4 custody, joint physical custody or sole physical custody or
5 any combination thereof;

6 (2) "Joint legal custody" means that the parents share
7 the decision-making rights, responsibilities, and authority
8 relating to the health, education and welfare of the child,
9 and, unless allocated, apportioned, or decreed, the parents
10 shall confer with one another in the exercise of decision-
11 making rights, responsibilities, and authority;

12 (3) "Joint physical custody" means an order awarding
13 each of the parents [significant, but not necessarily
14 equal,] equal or substantially equal periods of time during
15 which a child resides with or is under the care and
16 supervision of each of the parents. Joint physical custody
17 shall be shared by the parents in such a way as to assure
18 the child of frequent, continuing and meaningful contact
19 with both parents;

20 (4) "Third-party custody" means a third party
21 designated as a legal and physical custodian pursuant to
22 subdivision (5) of subsection 5 of this section.

23 2. The court shall determine custody in accordance
24 with the best interests of the child. There shall be a
25 rebuttable presumption that an award of equal or
26 substantially equal parenting time to each parent is in the
27 best interests of the child. Such presumption is rebuttable
28 only by a preponderance of the evidence in accordance with
29 all relevant factors, including, but not limited to, the
30 factors contained in subdivisions (1) to (9) of this
31 subsection. The presumption may be rebutted if the court
32 finds that the parents have reached an agreement on all
33 issues related to custody or if the court finds that a
34 pattern of domestic violence has occurred as set out in
35 subdivision (7) of this subsection. When the parties have
36 not reached an agreement on all issues related to custody,
37 the court shall consider all relevant factors and enter
38 written findings of fact and conclusions of law, including,
39 but not limited to, the following:

40 (1) The wishes of the child's parents as to custody
41 and the proposed parenting plan submitted by both parties;

42 (2) The needs of the child for a frequent, continuing
43 and meaningful relationship with both parents and the
44 ability and willingness of parents to actively perform their
45 functions as mother and father for the needs of the child;

46 (3) The interaction and interrelationship of the child
47 with parents, siblings, and any other person who may
48 significantly affect the child's best interests;

49 (4) Which parent is more likely to allow the child
50 frequent, continuing and meaningful contact with the other
51 parent; the willingness and ability of parents to cooperate
52 in the rearing of their child; to maximize sharing

53 information and minimize exposure of the child to parental
54 conflict; and to utilize methods for resolving disputes
55 regarding any major decision concerning the life of the
56 child;

57 (5) The child's needs adjustment to the child's home,
58 school, and community; and the child's physical, emotional,
59 educational, and other needs. The fact that a parent sends
60 his or her child or children to a home school, as defined in
61 section 167.031, shall not be the sole factor that a court
62 considers in determining custody of such child or children;

63 (6) The mental and physical health of all individuals
64 involved, including the mental health or substance abuse
65 history experienced by either parent;

66 (7) Any history of abuse of any individuals involved,
67 including domestic and child abuse. In determining whether
68 the presumption is rebutted by a pattern of domestic
69 violence, the court shall consider the nature and context of
70 the domestic violence and the implications of the domestic
71 violence for parenting and for the child's safety, well-
72 being, and developmental needs. If the court finds that a
73 pattern of domestic violence as defined in section 455.010
74 has occurred, and, if the court also finds that awarding
75 custody to the abusive parent is in the best interest of the
76 child, then the court shall enter written findings of fact
77 and conclusions of law. Custody and visitation rights shall
78 be ordered in a manner that best protects the child and any
79 other child or children for whom the parent has custodial or
80 visitation rights, and the parent or other family or
81 household member who is the victim of domestic violence from
82 any further harm, whether physical, verbal, emotional, or
83 psychological;

84 [(7) The intention of either parent to relocate the
85 principal residence of the child; and

86 (8) The wishes of a child as to the child's
87 custodian. The fact that a parent sends his or her child or
88 children to a home school, as defined in section 167.031,
89 shall not be the sole factor that a court considers in
90 determining custody of such child or children.]

91 (8) The distance between the residences of the parents
92 seeking custody, including consideration of any relocation
93 which has occurred or an intent to relocate; and

94 (9) The reasonable input of the child as to the
95 child's custodian, if the court deems the child to be of
96 sufficient ability, age, and maturity to express an
97 independent, reliable preference and that such input is in
98 the best interests of the child and will not be emotionally
99 damaging, with due consideration of the influence that a
100 parent may have on the child's input.

101 3. (1) In any court proceedings relating to custody
102 of a child, the court shall not award custody or
103 unsupervised visitation of a child to a parent if such
104 parent or any person residing with such parent has been
105 found guilty of, or pled guilty to, any of the following
106 offenses when a child was the victim:

107 (a) A felony violation of section 566.030, 566.031,
108 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
109 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
110 566.203, 566.206, 566.209, 566.211, or 566.215;

111 (b) A violation of section 568.020;

112 (c) A violation of subdivision (2) of subsection 1 of
113 section 568.060;

114 (d) A violation of section 568.065;

115 (e) A violation of section 573.200;

116 (f) A violation of section 573.205; or

117 (g) A violation of section 568.175.

118 (2) For all other violations of offenses in chapters
119 566 and 568 not specifically listed in subdivision (1) of
120 this subsection or for a violation of an offense committed
121 in another state when a child is the victim that would be a
122 violation of chapter 566 or 568 if committed in Missouri,
123 the court may exercise its discretion in awarding custody or
124 visitation of a child to a parent if such parent or any
125 person residing with such parent has been found guilty of,
126 or pled guilty to, any such offense.

127 4. The general assembly finds and declares that it is
128 the public policy of this state that frequent, continuing
129 and meaningful contact with both parents after the parents
130 have separated or dissolved their marriage is in the best
131 interest of the child, except for cases where the court
132 specifically finds that such contact is not in the best
133 interest of the child, and that it is the public policy of
134 this state to encourage parents to participate in decisions
135 affecting the health, education and welfare of their
136 children, and to resolve disputes involving their children
137 amicably through alternative dispute resolution. In order
138 to effectuate these policies, the general assembly
139 encourages the court to enter a temporary parenting plan as
140 early as practicable in a proceeding under this chapter,
141 consistent with the provisions of subsection 2 of this
142 section, and, in so doing, the court shall determine the
143 custody arrangement which will best assure both parents
144 participate in such decisions and have frequent, continuing
145 and meaningful contact with their children so long as it is
146 in the best interests of the child.

147 5. Prior to awarding the appropriate custody
148 arrangement in the best interest of the child, the court
149 shall consider each of the following as follows:

150 (1) Joint physical and joint legal custody to both
151 parents, which shall not be denied solely for the reason
152 that one parent opposes a joint physical and joint legal
153 custody award. The residence of one of the parents shall be
154 designated as the address of the child for mailing and
155 educational purposes;

156 (2) Joint physical custody with one party granted sole
157 legal custody. The residence of one of the parents shall be
158 designated as the address of the child for mailing and
159 educational purposes;

160 (3) Joint legal custody with one party granted sole
161 physical custody;

162 (4) Sole custody to either parent; or

163 (5) Third-party custody or visitation:

164 (a) When the court finds that each parent is unfit,
165 unsuitable, or unable to be a custodian, or the welfare of
166 the child requires, and it is in the best interests of the
167 child, then custody, temporary custody or visitation may be
168 awarded to a person related by consanguinity or affinity to
169 the child. If no person related to the child by
170 consanguinity or affinity is willing to accept custody, then
171 the court may award custody to any other person or persons
172 deemed by the court to be suitable and able to provide an
173 adequate and stable environment for the child. Before the
174 court awards custody, temporary custody or visitation to a
175 third person under this subdivision, the court shall make
176 that person a party to the action;

177 (b) Under the provisions of this subsection, any
178 person may petition the court to intervene as a party in
179 interest at any time as provided by supreme court rule.

180 6. If the parties have not agreed to a custodial
181 arrangement, or the court determines such arrangement is not
182 in the best interest of the child, the court shall include a

183 written finding in the judgment or order based on the public
184 policy in subsection 4 of this section and each of the
185 factors listed in subdivisions (1) to ~~[(8)]~~ (9) of
186 subsection 2 of this section detailing the specific relevant
187 factors that made a particular arrangement in the best
188 interest of the child. If a proposed custodial arrangement
189 is rejected by the court, the court shall include a written
190 finding in the judgment or order detailing the specific
191 relevant factors resulting in the rejection of such
192 arrangement.

193 7. Upon a finding by the court that either parent has
194 refused to exchange information with the other parent, which
195 shall include but not be limited to information concerning
196 the health, education and welfare of the child, the court
197 shall order the parent to comply immediately and to pay the
198 prevailing party a sum equal to the prevailing party's cost
199 associated with obtaining the requested information, which
200 shall include but not be limited to reasonable attorney's
201 fees and court costs.

202 8. As between the parents of a child, no preference
203 may be given to either parent in the awarding of custody
204 because of that parent's age, sex, or financial status, nor
205 because of the age or sex of the child. The court shall not
206 presume that a parent, solely because of his or her sex, is
207 more qualified than the other parent to act as a joint or
208 sole legal or physical custodian for the child.

209 9. Any judgment providing for custody shall include a
210 specific written parenting plan setting forth the terms of
211 such parenting plan arrangements specified in subsection 8
212 of section 452.310. Such plan may be a parenting plan
213 submitted by the parties pursuant to section 452.310 or, in
214 the absence thereof, a plan determined by the court, but in
215 all cases, the custody plan approved and ordered by the

216 court shall be in the court's discretion and shall be in the
217 best interest of the child.

218 10. After August 28, 2016, every court order
219 establishing or modifying custody or visitation shall
220 include the following language: "In the event of
221 noncompliance with this order, the aggrieved party may file
222 a verified motion for contempt. If custody, visitation, or
223 third-party custody is denied or interfered with by a parent
224 or third party without good cause, the aggrieved person may
225 file a family access motion with the court stating the
226 specific facts that constitute a violation of the custody
227 provisions of the judgment of dissolution, legal separation,
228 or judgment of paternity. The circuit clerk will provide
229 the aggrieved party with an explanation of the procedures
230 for filing a family access motion and a simple form for use
231 in filing the family access motion. A family access motion
232 does not require the assistance of legal counsel to prepare
233 and file."

234 11. No court shall adopt any local rule, form, or
235 practice requiring a standardized or default parenting plan
236 for interim, temporary, or permanent orders or judgments.
237 Notwithstanding any other provision of law to the contrary,
238 a court may enter an interim order in a proceeding under
239 this chapter, provided that the interim order shall not
240 contain any provisions about child custody or a parenting
241 schedule or plan without first providing the parties with
242 notice and a hearing, unless the parties otherwise agree.

243 12. Unless a parent has been denied custody rights
244 pursuant to this section or visitation rights under section
245 452.400, both parents shall have access to records and
246 information pertaining to a minor child including, but not
247 limited to, medical, dental, and school records. If the
248 parent without custody has been granted restricted or

249 supervised visitation because the court has found that the
250 parent with custody or any child has been the victim of
251 domestic violence, as defined in section 455.010, by the
252 parent without custody, the court may order that the reports
253 and records made available pursuant to this subsection not
254 include the address of the parent with custody or the
255 child. A court shall order that the reports and records
256 made available under this subsection not include the address
257 of the parent with custody if the parent with custody is a
258 participant in the address confidentiality program under
259 section 589.663. Unless a parent has been denied custody
260 rights pursuant to this section or visitation rights under
261 section 452.400, any judgment of dissolution or other
262 applicable court order shall specifically allow both parents
263 access to such records and reports.

264 13. Except as otherwise precluded by state or federal
265 law, if any individual, professional, public or private
266 institution or organization denies access or fails to
267 provide or disclose any and all records and information,
268 including, but not limited to, past and present dental,
269 medical and school records pertaining to a minor child, to
270 either parent upon the written request of such parent, the
271 court shall, upon its finding that the individual,
272 professional, public or private institution or organization
273 denied such request without good cause, order that party to
274 comply immediately with such request and to pay to the
275 prevailing party all costs incurred, including, but not
276 limited to, attorney's fees and court costs associated with
277 obtaining the requested information.

278 14. An award of joint custody does not preclude an
279 award of child support pursuant to section 452.340 and
280 applicable supreme court rules. The court shall consider
281 the factors contained in section 452.340 and applicable

282 supreme court rules in determining an amount reasonable or
283 necessary for the support of the child.

284 15. If the court finds that domestic violence or abuse
285 as defined in section 455.010 has occurred, the court shall
286 make specific findings of fact to show that the custody or
287 visitation arrangement ordered by the court best protects
288 the child and the parent or other family or household member
289 who is the victim of domestic violence, as defined in
290 section 455.010, and any other children for whom such parent
291 has custodial or visitation rights from any further harm.